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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/015,740	12/13/2001	Bernhard Schulze Wartenhorst	5004273-001US1	8869
29739	7590	09/08/2005	EXAMINER	
SMITH MOORE LLP P.O. BOX 21927 GREENSBORO, NC 27420			PRICE, RICHARD THOMAS JR	
			ART UNIT	PAPER NUMBER
			3643	
DATE MAILED: 09/08/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/015,740

**Applicant(s)**WARTENHORST, BERNHARD  
SCHULZE**Examiner**

Thomas Price

**Art Unit**

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 June 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Nordegren et al U.S. Patent 4,011,838.

Nordegren et al teach an electronic milker which is structurally similar to the Applicant's claimed method of milking. The electronic milker of Nordegren et al includes electronic controlled predetermined phases, such as a stimulation phase, a milking phase and a post milking phase and a switch off phase. The duration of the phases is dependent on the rate of milk flow reaching certain predetermine levels and on time lapse parameters. The working vacuum or massage vacuum pulses also variable as to pulse frequency and duration. The teat cups can also be operated independently of one another, and can be subjected periodically to sequential pulses of the massage vacuum to operate the teat cups sequentially. A system control device is included for controlling the vacuum and pulse parameters of each phase in response to the level of milk flow and lapses of time, and includes electronic logic circuitry and electronic drivers.

Regarding claim 1, Nordegren teach in column 4, last paragraph, that "the teat cups can be subjected sequentially to the massage vacuum to operate the teat cups in sequential pulsation".

As for claim 2, the claimed phrase "only single teats are stimulated successively" broadly reads on each teat positioned in its respective teat cup liner, and each teat stimulated successively or sequentially. The term "successively" also means "sequentially". This occurs as the pulsation cycle is carried out. Negative pressure is applied to the teat cup liner, followed by a period, although small, of no pressure or atmospheric pressure, thus defining the sequential pulsation cycle.

In regards to claims 3 and 4, the Examiner believes that a phase without stimulation occurs between the sequential stimulation of two different teats or a single teat, otherwise, the sequentially stimulation would not exist.

Regarding claim 5, the udder receiving a pre-stimulation is broad enough to read on the farmer connecting the teat cups to the animal.

In regards to claim 6, the intensity of the pulsation can be adjusted depending on the time elapsed or the quantity of milk produced.

### ***Response to Arguments***

The Applicant's first argument, "the milking machine of Nordegren teaches a continuous (underlined for emphasis) milking process wherein the machine shifts from one phase to the next without any interruption in the stimulating/milking process" is duly noted. The Examiner would appreciate page and line numbers of the cited patent to support the Applicant's argument, although none is given. This argument stands in contrast to the numerous citations of the term the operative term "sequential". The Applicant further states that "there is no teaching or suggestion in Nodegren to provide a phase without any stimulation between any other phase taught in the reference". The

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Examiner directs the Applicant's attention to the word "phase". The claimed phase is not modified by any time parameters. And as such, the broadly claimed "phase" reads on a phase that occurs between each pulsation on the teat cup liners, hence the term sequential. Further, when the milking machine shifts from the stimulating phase to the milking phase, a phase will exist between the stimulating phase and the milking phase where there is no pulsation on the teat cup liner. This in essence broadly reads on the claim language "a phase without any stimulation occurs between the stimulating step and the milking step". If there was no phase without stimulating, as purported by the Applicant, then the machine of Nordegren would have a two part pulsation, one part negative pressure in the teat cup liner (stimulating phase) and then the second part with a greater negative pressure (milking phase) during this pulsation cycle. It is the Examiner's contention that between the stimulating phase and the milking phase there will be a phase of atmospheric pressure or no negative pressure on the teat cup liner, thus reading on the broadly claimed "a phase without any stimulation occurs between the stimulating step and the milking step".

***Response to Amendment***

Applicant's arguments filed 06-13-2005 have been fully considered but they are not persuasive.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

### ***Conclusion***

Summary: Claims 1-6 are rejected, while claims 7-30 are directed to a non-elected invention.

### ***Contact Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas Price whose telephone number is 571-272-6892. The examiner can normally be reached on Monday through Friday from 8:30a.m. to 5:00p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Thomas Price  
Primary Examiner GAU: 3643

rtp